



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM202Oct18

In the matter between

Agile Capital Holdings (Pty) Ltd

Primary Acquiring Firm

And

Provest Group (Pty) Ltd

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 16 January 2019
Order Issued on	: 16 January 2019
Reasons Issued on	: 29 January 2019

REASONS FOR DECISION

Approval

[1] On 16 January 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Agile Capital Holdings (Pty) Ltd ("Agile Holdings") and Provest Group (Pty) Ltd ("Provest"), hereinafter collectively referred to as the merging parties.

[2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Agile Holdings. Agile Holdings controls two firms, Zico Capital (Pty) Ltd (“Zico Capital”) and Zico Capital 2 (Pty) Ltd (“Zico Capital 2”). Agile Holdings, Zico Capital and Zico Capital 2 are hereinafter collectively referred to as the ‘Agile Group’.
- [4] Agile Holdings and its subsidiaries are investment holding companies, active in the private equity sector. The Agile Group invests in various sectors including mining, security, fleet management, personal care and beauty, and energy.

Primary Target Firm

- [5] Provest is controlled by PSG Alpha Investments (Pty) Ltd (“PSG Alpha”) with a 51% share capital holding. The Agile Group holds 42% of the issued share capital. The remaining share capital (7%) is dispersed amongst three other firms.
- [6] The activities of Provest are concentrated in the mining sector and more specifically the provision of safety related products and services. Provest operates through its four core divisions namely (i) cement and aggregate products, (ii) general mining activities, (iii) underground and surface support, and (iv) innovative technology solutions. Provest has four production plants situated in the North-West, Limpopo, Mpumalanga and Northern Cape provinces. Provest also has a workshop in Rustenburg.

Proposed transaction and rationale

- [7] In terms of the *Shareholders Agreement*, the Agile Group intends to increase its shareholding in Provest from 42% to 51%. Post-merger, the Agile Group will have *de jure* control over Provest.

Impact on competition

- [8] The Competition Commission (“Commission”) found that the proposed transaction does not give rise to a horizontal overlap as no firm within the Agile Group (except for the Agile Group’s shareholding in Provest) provides or has interests in businesses that provide cementitious products, general mining activities, underground support and innovative technology solutions. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We agree with the Commission’s conclusion.

Public interest

- [9] The merging parties submitted that the proposed transaction will not result in any retrenchments or job losses. The Agile Group has no employees. Provest employees are represented by the following trade unions namely, National Union of Mineworkers (NUM), Association of Mineworkers and Construction Union (AMCU), General Industries Workers Union of SA (GIWUSA), Building Construction & Allied Workers Union (BCAWU), South African Equity Workers Association (SAEWA), and National Transport Movement (NTM).
- [10] None of the trade unions confirmed receipt of the merger notice nor did they respond to the Commission’s invitation to indicate whether or not they had concerns with the proposed transaction. Although the trade unions have not responded, the Commission is of the view that the proposed transaction is unlikely to raise employment concerns given that no employees will be retrenched.
- [11] The proposed transaction raises no other public interest concerns.

Conclusion

[12] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr Norman Manoim

29 January 2019

Date

Mr Enver Daniels and Ms Andiswa Ndoni concurring.

Tribunal Researcher: Hlumelo Vazi

For the merging parties: N Loopoo of Cliffe Dekker Hofmeyr

For the Commission: I Mhlongo and W Gumbi